IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.955 OF 2005

WITH

SECOND APPEAL NO.704 OF 2005

WITH

CIVIL APPLICATION NO.1196 OF 2005

Shri Govind Tukaram Khade ...Appellant

Versus

Shri Bhiku Mukinda Khade (deceased)

by heirs :

1) Muktabai Shankar Thanekar & Ors. ...Respondents

.....

Mr.G.N.Salunke for Appellant.

Mr.Amit Borkar for Respondents.

.....

**CORAM: A.M.KHANWILKAR, J.**

**JANUARY 13, 2006.**

**P.C.**

1. Heard Counsel for the parties.

2. In my opinion, no substantial question of

law arises for consideration. Counsel for the Appellant, however, contends that Appellate Court has proceeded on the assumption that there was relationship between Plaintiff and Defendant. The Appellate Court was persuaded to do so because of the statement made by the Advocate. Counsel for the Appellant submits that said statement made on behalf of the Appellant before the Appellate Court was incorrect and not binding on the Appellant, as it is contrary to the record. It is then contended that unless Court below was to record clear finding about the relationship of the parties, no other evidence would be of any avail to proceed against the Appellants.

3. There is no substance in this submission. The submission clearly overlooks the evidence adduced before the Court below on the question of geneology. After analysing the entire evidence in that behalf, in Paragraph 9 onwards, in Para 11, in particular, the Trial Court has recorded finding of fact that the Defendnat is shown as son of Tukaram Khade and further it is shown that Tukaram Khade was son of Kallappa Khade. The document would

clearly indicate that Kallappa Khade was the ancestor of the present Plaintiff. This finding of fact reached by the Trial Court was not challenged before the Appellate Court on behalf of the Appellant, as the Advocate for the Appellant fairly accepted the factual position about the relationship between the parties, as is noted in Para 8 of the impugned Judgment. In the first place, the statement made by the Advocate on behalf of the Appellant before the Court below on the point of geneology will be binding on the Appellant, being statement on the question of fact. In other words, the contention raised on behalf of the Appellant that no relationsip exists between the parties, will have to be answered against the Appellant, as has been recorded by two Courts below. Once that finding is reached, no fault can be found with the approach of the Court below, as the Court below has proceeded on the basis of evidence of P.W.1 Dnyandeo, who, in no uncertain terms, admitted that the suit property was inherited by his father from his forefathers. The Court below has rightly recorded that it is not the case of the Plaintiff that the property in the Suit

came to the share of the branch of his father in partition of the family property.

4. It is in this backdrop, the Courts below have reached at the conclusion that the Plaintiff failed to discharge the burden of proof that the suit property was of his exclusive ownership. There is no reason to interfere with the said concurrent view taken by the two Courts below. Accordingly, no sbstantial question of law would arise for consideration in these Appeals. Hence, dismissed.

5. In view of this order, Civil Application also stands disposed of.

A.M.KHANWILKAR, J.